

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Russo	Team: Squad #11	CCRB Case #: 202004591	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/30/2020 12:25 AM	Location of Incident: Southbound Exit 5-East 177th Street and Sheridan Expressway	Precinct: 48	18 Mo. SOL 10/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 06/25/2020 8:22 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 06/25/2020 8:22 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Dmitriy Lyubchenko	11879	954083	HWY 01
2. POM Peter Tannazzo	19656	952278	HWY 01

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robert Kosich	21284	959736	HWY 01
2. POM Scott Rizzo	02824	939324	HWY 01
3. POM Carlos Montoya	08425	957868	HWY 01
4. POM Anthony Grosso	16983	951793	HWY 01
5. POM Maxwell Potter	14683	956177	HWY 01

Officer(s)	Allegation	Investigator Recommendation
A.POM Dmitriy Lyubchenko	Abuse: Police Officer Dmitriy Lyubchenko threatened to arrest § 87(2)(b)	
B.POM Peter Tannazzo	Abuse: Police Officer Peter Tannazzo searched the vehicle in which § 87(2)(b) was an occupant.	
C.POM Peter Tannazzo	Discourtesy: Police Officer Peter Tannazzo acted discourteously toward § 87(2)(b)	
D.POM Dmitriy Lyubchenko	Abuse: Police Officer Dmitry Lyubchenko searched the vehicle in which § 87(2)(b) was an occupant.	
E.POM Dmitriy Lyubchenko	Abuse: Police Officer Dmitriy Lyubchenko seized § 87(2)(b) property.	

### Case Summary

On June 25, 2020, § 87(2)(b) —addressed as § 87(2)(b) in this report—filed this complaint with the CCRB via the on-line website.

On April 30, 2020, at approximately 12:25 a.m., § 87(2)(b) was pulled over by a marked patrol vehicle as he drove onto Exit 5 of the Sheridan Expressway and East 177<sup>th</sup> Street in the Bronx. Police Officer Dmitry Lyubchenko and Police Officer Robert Kosich, both of Highway District 1, approached § 87(2)(b) vehicle. PO Lyubchenko asked § 87(2)(b) for his driver's license, registration, and proof of insurance. § 87(2)(b) did not initially provide the documents, instead informing PO Lyubchenko of his Moorish American National status. PO Lyubchenko noticed that the Vehicle Identification Number (VIN) on § 87(2)(b) vehicle was covered and asked him to remove the obstruction. When § 87(2)(b) refused, PO Lyubchenko alleged told him that if he did not, he would take his property and take him to jail (**Allegation A: Abuse of Authority-Threat of Arrest,** § 87(2)(g)).

Police Officer Scott Rizzo and Police Officer Peter Tannazzo, both of Highway District 1, also responded to the scene. PO Tannazzo reached inside of § 87(2)(b) driver's side window and opened the door from the inside (**Allegation B: Abuse of Authority-Vehicle Search,** § 87(2)(g)). § 87(2)(b) continued reading a document outlining his Moorish American National status. PO Tannazzo grabbed these documents from § 87(2)(b) hands and placed them on the windshield (**Allegation C: Discourtesy-Action,** § 87(2)(g)). Once § 87(2)(b) was outside of the vehicle, PO Tannazzo removed the piece of paper obstructing the view of § 87(2)(b) VIN, while PO Lyubchenko simultaneously opened § 87(2)(b) driver's side door to take a photograph of the VIN located on the door jamb. PO Lyubchenko returned to his police car to issue § 87(2)(b) summonses, while PO Tannazzo remained by the vehicle, briefly searching the reachable areas of the front driver's seat (**Subsumed within Allegation B) (Allegation D: Abuse of Authority-Vehicle Search,** § 87(2)(g)).

Towards the end of the interaction, PO Lyubchenko seized § 87(2)(b) vehicle (**Allegation E: Abuse of Authority-Seizure of Property,** § 87(2)(g)).

PO Lyubchenko issued § 87(2)(b) four summonses for not having a distinctive plate, operating a motor vehicle without insurance, unregistered motor vehicle, and unlicensed operator (BR01-04).

The investigation obtained BWC regarding this incident from PO Lyubchenko (BR05), PO Kosich (BR06), PO Rizzo (BR07), PO Tannazzo (BR08), PO Montoya (BR09), PO Potter's BWC, (BR10) and PO Grosso (BR11).

### Findings and Recommendations

#### Allegation (A) Abuse of Authority: Police Officer Dmitry Lyubchenko threatened to arrest § 87(2)(b)

PO Lyubchenko's BWC footage shows his entire interaction with § 87(2)(b) (BR05). The footage does not capture PO Lyubchenko threatening to arrest § 87(2)(b) at any point.

§ 87(2)(b) (BR12) stated that PO Lyubchenko threatened to take him to jail if he did not remove the paper covering his VIN.

PO Lyubchenko (BR13) testified that he did not tell § 87(2)(b) that he would be arrested for blocking his vehicle's VIN.

§ 87(2)(g)

#### Allegation (B) Abuse of Authority: Police Officer Peter Tannazzo searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) was pulled over after committing multiple New York State Vehicular Traffic Law violations—supported by the summonses he was issued during this

incident (BR01-BR04).

PO Lyubchenko's BWC (BR05) shows that from the 01:06 mark to the 03:59 mark, PO Lyubchenko requests § 87(2)(b) driver's license and registration, which § 87(2)(b) refuses to provide. At the 03:59 mark, § 87(2)(b) produces a passport identification card, not a driver's license. From the 4:00 mark to the 4:16 mark, PO Lyubchenko requests documentation for the vehicle and requests § 87(2)(b) to remove a piece of paper obstructing the vehicle's VIN. § 87(2)(b) refuses to provide documentation for the vehicle or to remove the paper obstructing the vehicle's VIN. At the 6:02 mark, PO Lyubchenko tells § 87(2)(b) that his vehicle would be impounded and vouchered, and he could retrieve it when he obtains a driver's license, registration for his vehicle, as well as insurance. At the 07:09 mark, PO Lyubchenko asks § 87(2)(b) to step out of the vehicle, after which PO Tannazzo reaches into the vehicle and opens the driver's side door from the inside. From the 09:55 mark to the 11:50 mark, he runs § 87(2)(b) Passport ID card and the VIN associated with § 87(2)(b) vehicle in the computer in his RMP and learned that § 87(2)(b) driver's license was suspended and that his vehicle was not registered.

PO Tannazzo's BWC footage (BR08) reveals the heavy tints of § 87(2)(b) windows at the 00:18 mark; the same time stamp reveals that § 87(2)(b) window was rolled down less than 50% during the incident. At the 02:06 mark, PO Rizzo tells § 87(2)(b) to step out of the vehicle three times, while § 87(2)(b) reads from a stack of papers and does not comply. At the 02:10 mark, PO Tannazzo reaches his hand inside of § 87(2)(b) driver's side door to open the door from the inside. Once the door is open, PO Rizzo and PO Lyubchenko continue to tell § 87(2)(b) to step outside. § 87(2)(b) proceeded to exit the vehicle, after PO Tannazzo took the stack of papers from his hand. At the 03:44 mark, after PO Lyubchenko opens § 87(2)(b) driver's side door, PO Tannazzo removes the paper that is obstructing the VIN on § 87(2)(b) windshield. PO Tannazzo asks PO Lyubchenko if he needs the VIN, and PO Lyubchenko informs him that he has already obtained it. At the 04:20 mark, PO Tannazzo shines his light at the exterior of the vehicle, including the backseat window in the driver's side and the interior of the driver's side, as the driver's door was open. At the 04:35 mark, PO Tannazzo crosses the threshold of the driver's side and shines his light into the area around the driver's seat. There was nothing removed from inside the vehicle.

§ 87(2)(b) stated (BR12) that officers, who § 87(2)(b) could not specifically recall, asked him to step out of the vehicle, about three to four times. § 87(2)(b) originally refused but eventually he stepped out. Prior to the vehicle stop, he intentionally covered the VIN on the windshield of his car. After § 87(2)(b) stepped out of the vehicle, PO Tannazzo removed the piece of paper that was obstructing the VIN. As § 87(2)(b) stepped to the sidewalk, PO Tannazzo entered his vehicle through the driver's side door, which was already open. PO Tannazzo placed his knee on the driver's seat and used his flashlight to see if there was anything out in plain view "that he can use". § 87(2)(b) did not see PO Tannazzo go into the backseat area, the trunk nor did he see the doors in the rear open at any point. PO Tannazzo did not go into any compartments of the vehicle.

PO Lyubchenko (BR13) pulled § 87(2)(b) vehicle over for having a license plate attached to the vehicle he was operating that he did not recognize a plate issued within the United States. Upon approach of the vehicle, § 87(2)(b) lowered his window about four inches. It took PO Lyubchenko multiple requests to receive § 87(2)(b) identification, which was a passport ID card and not a driver's license. § 87(2)(b) refused to reveal his VIN number or to provide any documentation for the vehicle.

PO Tannazzo (BR14) stated that he reached into § 87(2)(b) driver's side door and opened it from the inside because § 87(2)(b) was refusing to provide identification, documentation for the vehicle and his heavily tinted driver side window was rolled down only a few inches, which prevented the officers from being able to fully observe what was inside of the vehicle. PO Tannazzo did not recall there being any issues with § 87(2)(b) VIN. § 87(2)(b) read from a stack of papers, after which officers asked him to step out. § 87(2)(b) did not comply

and continued reading. PO Tannazzo took the papers from § 87(2)(b) hands and asked him to step out. After § 87(2)(b) stepped out of the vehicle, PO Tannazzo remained by the vehicle, given that it was about to be towed. PO Tannazzo used his flashlight to illuminate the reachable areas near the driver's seat of the vehicle, like the floor of the front area and around the center console—any area where § 87(2)(b) could have concealed an item while he was in the driver's seat. PO Tannazzo did not recall looking under the seat or in any compartments. After watching his BWC, PO Tannazzo stated that his head may have gone inside of the vehicle a few inches, but he did not believe he entered the vehicle.

NYPD Patrol Guide Procedure 218-13 states that when an automobile is in the possession of the department, officers must search the interior thoroughly, including but not limited to the glove compartment, console, under the floor mats, and the trunk. This search is conducted to protect property, ensure against unwarranted claims of theft, and protect uniformed members of the service and others against dangerous instrumentalities. Officers must remove all valuables from the vehicle and invoice them using a Property Clerk Invoice form (BR15).

The BWC shows that PO Lyubchenko told § 87(2)(b) that his vehicle would be towed prior to PO Tannazzo opening the vehicle's driver side door and briefly searching front interior of the vehicle. Additionally, PO Tannazzo testified that he searched § 87(2)(b) vehicle with knowledge that it would be impounded. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

#### **Allegation (C) Discourtesy: Police Officer Peter Tannazzo acted discourteously toward**

§ 87(2)(b)

PO Tannazzo's BWC (BR08) reveals § 87(2)(b) window tints at the 00:18 mark. At the 2:06 mark, PO Rizzo repeatedly tells § 87(2)(b) to step out of the vehicle. § 87(2)(b) reads from a stack of papers, which explain his rights as Moorish American National, and does not comply with PO Tannazzo's commands. At the 02:17 mark, PO Tannazzo reaches into the vehicle to grab the stack of papers that § 87(2)(b) was reading from, which he placed underneath one of the wipers of § 87(2)(b) front windshield. Once the documents were removed, § 87(2)(b) proceeded to step out.

§ 87(2)(b) stated (BR12) that PO Tannazzo reached into the vehicle to snatch from his hands the documents that informed him of his rights as a Moorish American National.

PO Tannazzo stated (BR14) that after opening § 87(2)(b) driver side door, § 87(2)(b) was reading from a stack of papers. Officers asked § 87(2)(b) to step out of the vehicle multiple times, but he continued reading from the stack of papers. § 87(2)(b) ignored the officers' requests that he step out of the vehicle. At this point, PO Tannazzo grabbed the papers from § 87(2)(b) hands, and placed them on the dashboard of the vehicle. Following this action from PO Tannazzo, § 87(2)(b) exited the vehicle.

NYPD Patrol Guide Procedure 200-02 states that the NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect, while efficiently rendering police services and enforcing the laws impartially (BR22).

From the commencement of this incident, § 87(2)(b) refused to provide the officers with a driver's license or any documentation for the vehicle which he was operating. The BWC shows § 87(2)(b) continuously reading from a stack of papers while ignoring the officers' requests

that he step out of the vehicle. The footage also shows that vehicle had tinted windows which limited visibility into the car. § 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Dmitry Lyubchenko searched the vehicle in which § 87(2)(b) was an occupant.**

PO Lyubchenko's BWC (BR05) shows that, at the 04:08 mark, PO Lyubchenko informs § 87(2)(b) that his Vehicle Identification Number (VIN) was altered, which is a federal crime. PO Lyubchenko asked § 87(2)(b) to remove the obstruction and § 87(2)(b) responded, "No, I will not." At the 08:47 mark, after § 87(2)(b) has stepped out of the vehicle, PO Lyubchenko opens § 87(2)(b) driver's side door and subsequently takes a photograph of the VIN in the door jamb. PO Tannazzo's BWC (BR08) show that, at the 03:44 mark, PO Lyubchenko opens § 87(2)(b) driver's side door and informs PO Tannazo that he has obtained the VIN.

§ 87(2)(b) (BR12) did not mention PO Lyubchenko searching his car or obtaining his VIN.

PO Lyubchenko (BR13) stated that he noticed § 87(2)(b) had a piece of paper obstructing the view of his VIN, at which point he asked § 87(2)(b) to remove the obstruction. § 87(2)(b) refused and replied, "no", to PO Lyubchenko's request. When § 87(2)(b) stepped out of the vehicle, PO Lyubchenko observed the VIN of the vehicle on the door jamb. PO Lyubchenko did not mention taking a photograph of the VIN.

New York v. Class, 475 U.S. 106 (BR16) states that, because of the unique and important governmental interests served by inspection of the Vehicle Identification Number (VIN), an officer making a lawful stop of a vehicle has the right and duty to inspect the VIN. Where the VIN is not visible from outside the vehicle or voluntarily disclosed by the driver, the officer may enter the vehicle to the extent necessary to read the VINs.

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Dmitriy Lyubchenko seized § 87(2)(b) property.**

PO Lyubchenko's BWC (BR05) shows that from the 09:55 mark to the 11:50 mark, he runs § 87(2)(b) Passport ID and the VIN associated with § 87(2)(b) vehicle in the computer in his RMP, after which he learned that § 87(2)(b) license is suspended and that his vehicle is unregistered.

§ 87(2)(b) (BR12) testified since he is under the common law, he does not have to abide by the same vehicle and traffic laws as other individuals. More specifically, under the Motor Vehicle Accident Indemnification Corporation (MVAIC), one does not need insurance to travel, nor to register the automobile or carry a driver's license to operate a vehicle used for personal purposes.

PO Lyubchenko (BR13), stated that he believed he told PO Kosich to call the tow truck,

but he was not certain. Additionally, he, PO Kosich (BR17), PO Tannazzo (BR14), and PO Rizzo (BR18) all consistently stated that the reason § 87(2)(b) vehicle was towed was that the vehicle was unregistered, uninsured and § 87(2)(b) did not have a driver's license.

NYPD Patrol Guide Procedure 208-26 states that all property where there is reasonable cause to believe is the means of committing, aiding, or furthering crime may be seized by the police department (BR23).

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first complaint to which § 87(2)(b) family has been a party (BR19).
- Police Officer Dmitry Lyubchenko has been a member of service for eight years and has been a subject to one other CCRB complaint, with three allegations—none of which have been substantiated.
- Police Officer Peter Tannazzo has been a member of service for nine years and has been a subject to two other CCRB complaints, with three allegations—none of which have been substantiated.

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- On March 10, 2021, the Office of the New York City Comptroller confirmed that § 87(2)(b) has filed a notice of claim regarding this incident, requesting a total of \$73,034.19. § 87(2)(b) alleged that willfully conspired to injure, oppress, threaten, intimidate, and extort him by initiating a traffic stop without basis and subsequently detaining, accosting, hindering, and depriving him of various rights (BR21). A 50H hearing was held on § 87(2)(b).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 11

Investigator:



Signature

Inv. Jessica Russo

Print Title & Name

07/13/2021

Date

Squad Leader: Edwin Pena

IM Edwin Pena

06/02/21

**CCRB Case # 202004591**

Signature

Print Title & Name

Date

Reviewer:

Signature

Print Title & Name

Date